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Country follow-up to ECE studies on regulatory and procedural barriers to trade

Follow-up on Economic Commission for Europe countries studies: Kazakhstan

Summary

This report was prepared by the secretariat to brief member States about Kazakhstan's follow-up to the ECE study on regulatory and procedural barriers to trade in the country.

The report is presented to the Steering Committee on Trade Capacity and Standards for decision.

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I. Introduction

1. In 2014, the ECE carried out a comprehensive survey-based assessment of regulatory and procedural barriers to trade in Kazakhstan, with a view to supporting the Government's efforts to increase the trade sector's contribution to export diversification and sustainable growth. The findings were published in a study, which featured detailed action-oriented recommendations that were borne out of consultations with public and private stakeholders.[1]

2. A consistent theme running through the study was the lack of up-to-date information on trade-related regulations. Even though the laws are published on several State agencies' websites, traders found it difficult to keep abreast of legislative reforms, applied regulatory requirements and associated administrative procedures. Traders reported that they had to piece together information from different sources, with the consequence of assuming additional transaction costs in the form of delays. For small enterprises, such delays often acted as a disincentive to exports.

3. Moreover, published information was invariably in Russian and, therefore, incomprehensible to a significant segment of partner countries. Buyers and suppliers from these countries had no means to establish an understanding on the country's regulatory requirements, beyond the information obtained from trade promotion institutions and missions abroad.

4. To address this shortfall, the ECE assisted the government in establishing a comprehensive database of applied non-tariff measures (NTMs) using the internationally recognized United Nations Conference on Trade and Development (UNCTAD) administered Multi-agency Support Team (MAST) classification system. The database was consolidated by a national team of experts from the Ministry of National Economy.

5. The team passed UNCTAD's online training course on the use of the MAST classification system, which was followed by an intensive face-to-face training course in Geneva, Switzerland over the period 22-24 March 2017. The team members also received on the job training over the period May-October 2017, during which they compiled the database under the supervision of the UNCTAD regional expert.

6. The NTM database was validated during a National Stakeholder Meeting that was held at the Ministry of National Economy in Astana, Kazakhstan on 21 February 2018. The database will be used by the Government to strengthen its information dissemination function, and will be integrated into UNCTAD's Trade Analysis Information System (TRAINS).[2] This report provides an overview of Kazakhstan's NTM database.

II. Overview of Kazakhstan's non-tariff measures

7. Kazakhstan's NTMs totalled 604 in December 2017, of which 374 measures (or around 61.8% per cent) were approximated to those of the Eurasian Economic Union[3] by

[1] https://www.unece.org/tradewelcome/studies-on-regulatory-and-procedural-barriers-to-trade.html

[2] TRAINS features tariff and non-tariff measures as well as import flows by origin for more than 150 countries at the most disaggregated level of Harmonized System (HS). The data can be accessed at: http://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures/NTMs-Data.aspx

[3] In 2017, the Eurasian Economic Union membership comprised of Armenia, Belarus, Kazakhstan, Kyrgyzstan and the Russian Federation. The Union was established pursuant to the Treaty on the Eurasian Economic Union that was signed by Belarus, Kazakhstan and the Russian Federation on 29 May 2014 and entered into force on 1 January 2015. Armenia and Kyrgyzstan signed separate treaties to accede the Union

implementing the Union's harmonized legislation (i.e., the common technical regulations) and integrating the Union's regulatory requirements into national laws.[4]

8. The remaining NTMs, which totalled 230 measures, were established under 59 legislative acts and pertained to specific sectors/products not covered by the Union's harmonized legislation. Some of these acts were slated for approximation with those of the Union's over the period 2018-2025 (Annex, Table 1)

9. Technical Barriers to Trade (TBT) measures (Chapter B of the MAST classification system) represented the largest segment of the remaining national NTMs (with a 60.9 percent share) and pertained mainly to labelling requirements. Sanitary and Phytosanitary (SPS) measures (Chapter A), including temporary geographic prohibitions for sanitary and phytosanitary purposes, accounted for the second largest segment (19.13 percent). The most affected products by TBT and SPS measures were miscellaneous chemical products (HS 38), beverages, spirits and vinegar (HS 22), iron and steel (HS 72), live animals (HS 01) along with albuminoidal substances, modified starches, glues and enzymes (HS 35).

10. Export-related measures (Chapter P) accounted for 14.78 percent of the country's non harmonized NTMs and were mainly related to, among others, testing, labelling and packaging requirements.[5] These were followed by price-control measures (Chapter F) with a 2.17 percent share; pre-shipment inspection (Chapter C) with a 1.30 percent share; and, measures affecting competition (Chapter H), non-automatic licensing (Chapter E) and finance measures (Chapter G) with a modest combined share of 1.74 percent.

11. The most affected products by export-related measures were: miscellaneous chemical products (HS 38); iron and steel (HS 72); tools, implements, cutlery, spoons and forks, of base metal; parts thereof of base metal (HS 82); tanning or dyeing extracts; tannins and their derivatives, dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks (HS 32); and beverages, spirits and vinegar (HS 22). A more detailed breakdown of the country's non-harmonized NTMs by MAST Chapter is provided in the Annex (Table 2).

III. Application of the national import-related non-tariff measures

12. Around 79 percent of the non-harmonized import related NTMs, or 155 measures, were applied on an equal basis to all countries. The remaining were applied to third countries and the Russian Federation, and are not in contradiction with the Most Favoured Nation (MFN) principle (Annex, Table 3).

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on 9 October and 23 December 2014, respectively. The treaties entered into force on 2 January 2015 (Armenia) and 12 August 2015 (Kyrgyzstan). The main provisions guiding the adoption of harmonized NTMs are established under the Treaty on the Eurasian Economic Union (Article 44; Articles 46-56 and Annexes 6, 7, 8, 9, 12) and the Board of the Eurasian Economic Commission Decision No. 30 of April 21, 2015 "On non-tariff regulating measures".

[4] The Number of Eurasian Economic Union NTMs, established under 46 Union legislative acts, stood at 374 measures in December 2017. Mapped against MAST chapters, these comprised 120 Sanitary and phytosanitary (SPS) measures (Chapter A), 239 technical barriers to trade (TBT) measures (Chapter B), 1 pre-shipment inspection and other formalities (Chapter C), 2 non-automatic licensing (Chapter E), and 12 export-related measures (Chapter P).

[5] The bulk of these measures fall under technical measures not specified elsewhere (P69), which covers among others, testing, labelling and packaging requirements. NTM classification of export related technical measures consists of 3 subcategories (inspection – P61, certification – P62, and measures not specified elsewhere– P69).

13. Moreover, the government was in the process of further elaborating the NTMs to ensure a uniform interpretation of affected products. This involved addressing instances where national (non-harmonized) legal acts define affected products using the previous version of HS codes.

Annex

Table 1: Eurasian Economic Union legislation scheduled to enter into force in Kazakhstan in 2018-2025

Eurasian Economic Union legislation	*Scheduled implementation date*
Agreement on unified principles and rules of the distribution of pharmaceutical products within the Eurasian Economic Union	31.12.2025
Decision of August 18, 2017 No. 97 "On establishing the tariff-rate quotas for certain agricultural goods imported in 2018 into the EEU"	01.01.2018
Decision of August 9, 2016 No. 68 "On technical regulation of the Eurasian Economic Union "Requirements for liquefied petroleum gas to be used as fuel" (EEU TR 036/2016)	01.01.2018
Decision of February 12, 2016 No. 26 "On special sign of distribution of medical products on the territory of Eurasian Economic Union"	31.12.2021
Decision of February 12, 2016 No. 27 "On establishment of unified requirements for safety and efficiency of medical products, requirements for their labelling and requirements for operating manuals/documents"	31.12.2021
Decision of February 12, 2016 No. 46 "On the registration rules and rules of expertise for the safety, quality and efficiency of medical products"	31.12.2021
Decision of November 3, 2016 No. 76 "On requirements for the labelling of pharmaceutical products and veterinary drugs"	31.12.2025
Decision of November 3, 2016 No.6 77 "On good manufacturing practices of the Eurasian Economic Union"	31.12.2025
Decision of November 3, 2016 No. 78 "On rules on registration and expertise of pharmaceutical products for use in the medical sphere"	31.12.2025
Decision of November 3, 2016 No. 80 "On requirements for the distribution practice within the Eurasian Economic Union"	31.12.2025
Decision of November 3, 2016 No. 88 "On requirements for manuals on application of pharmaceutical products and on their common specification for medical use"	31.12.2025
Decision of November 30, 2016 No 157 "On uniform quarantine phytosanitary requirements to quarantinable products and objects applied at the customs border and the on customs territory of Eurasian Economic Union"[6]	01.01.2018
EEC Decision of October 18, 2016 No. 113 "On technical regulation of the Eurasian Economic	01.03.2018

[6] Most of the measures emerging from this legislation were applied as of July 1, 2017 (for all Eurasian Economic Union members). Only one measure will be applied as of January 1, 2018 (for all Eurasian Economic Union members): requirement to import into the customs territory of the Union and displace through the customs territory of the Union the plants with soil or nutritional additive containing soil and potted plants with cultivation soil from those production areas, places and (or) locations that are free from quarantine objects (measure A69 – "Other requirements on production or post-production processes, n.e.s").

Eurasian Economic Union legislation	*Scheduled implementation date*
Union "On setting the limits on the contents of dangerous substances in electrical and radioelectronic goods" (EEU TR 037/2016)	
EEC Decision of October 18, 2016 No. 114 "On technical regulation of the Eurasian Economic Union "On safety of the equipment of theme parks" (EEU TR 038/2016)	17.04.2018
Technical regulation of Customs Union "On requirements for the motor gasoline and aviation motor gasoline, diesel and marine fuels, jet engine fuel and black oil fuel" (CU TR 013/2011) confirmed by Decision of October 18, 2011 No. 826 (1 measure; other 5 measures came into force before 01.01.2018))	01.01.2018
Technical regulation of Customs Union "On safety of explosives and derivative products" (CU TR 028/2012) confirmed by Decision of July 20, 2012 No. 57[*]	01.01.2021
Technical regulation of Eurasian Economic Union "On requirements to mineral fertilizers" (EEU TR 039/2016) confirmed by Decree of November 30, 2016 No. 150 "On technical regulation of Eurasian Economic Union "On requirements to mineral fertilizers"	02.06.2021
Technical regulation of Eurasian Economic Union "On safety of equipment for children's playgrounds" (EEU TR 042/2017) confirmed by Decision of May 17, 2017 No. 21	17.11.2018
Technical regulation on safety of chemical products (EEU TR 041/2017) confirmed by Decision of March 7, 2017 No. 19 "On technical regulation of Eurasian Economic Union "On safety of chemical products"	02.06.2021

Table 2: Breakdown by MAST chapter of Kazakhstan's non-harmonized NTMs *(2-3 digit NTM code)*

2-3 digit NTM code	*Description*	*No. of NTMs*	*% Share*
A11	Temporary geographic prohibitions for SPS reasons	23	10
A14	Special authorization requirement for SPS reasons	1	0.43
A22	Restricted use of certain substances in foods and feeds and their contact materials	1	0.43
A31	Labelling requirements	1	0.43
A51	Cold/heat treatment	7	3.04
A59	Treatment for elimination of plant and animal pests and disease-causing organisms in the final product, n.e.s. (not elsewhere specified)	1	0.43
A63	Food and feed processing	1	0.43
A64	Storage and transport conditions	2	0.87
A81	Product registration requirement	2	0.87
A82	Testing requirement	2	0.87

[*] Only one measure remains to be applied on 1 January 2021, which pertains to quality requirement for explosives and derivative products (marking explosives by injecting marker substances and microcarriers). The remaining measures established under this legislation were applied on 12 August 2017.

2-3 digit NTM code	*Description*	*No. of NTMs*	*% Share*
A83	Certification requirement	1	0.43
A89	Conformity assessment related to SPS, n.e.s.	2	0.87
B14	Authorization requirement for TBT reasons	6	2.61
B21	Tolerance limits for residues of or contamination by certain substances	3	1.3
B22	Restricted use of certain substances	2	0.87
B31	Labelling requirements	40	17.39
B32	Marking requirements	5	2.17
B33	Packaging requirements	5	2.17
B4	Production or post-production requirements	1	0.43
B41	TBT regulations on production processes	10	4.35
B42	TBT regulations on transport and storage	14	6.09
B49	Production or post-production requirements, n.e.s.	1	0.43
B7	Product-quality or -performance requirement	13	5.65
B81	Product registration requirement	3	1.3
B82	Testing requirement	17	7.39
B83	Certification requirement	11	4.78
B853	Traceability information requirements: Distribution and location of products after delivery	1	0.43
B859	Traceability information requirements: Traceability requirements, n.e.s.	1	0.43
B89	Conformity assessment related to TBT, n.e.s.	3	1.3
B9	TBT measures, n.e.s.	4	1.74
C3	Requirement to pass through specified port of customs	1	0.43
C4	Import-monitoring and -surveillance requirements and other automatic licensing measures	2	0.87
E621	Other tariff quotas included in other trade agreements: Global allocation	1	0.43
F69	Additional charges, n.e.s.	1	0.43
F71	Consumption taxes	1	0.43
F72	Excise taxes	2	0.87
F73	Taxes and charges for sensitive product categories	1	0.43
G14	Refundable deposits for sensitive product categories	1	0.43
H11	State-trading enterprises, for importing	1	0.43
H9	Measures affecting competitions, n.e.s.	1	0.43

2-3 digit NTM code	*Description*	*No. of NTMs*	*% Share*
P11	Export prohibition	1	0.43
P13	Licensing- or permit requirements to export	5	2.17
P21	State-trading enterprises, for exporting	1	0.43
P4	Measures on re-export	2	0.87
P5	Export taxes and charges	3	1.3
P62	Certification required by the exporting country	3	1.3
P69	Export technical measures, n.e.s.	15	6.52
P7	Export subsidies	1	0.43
P9	Export measures, n.e.s.	3	1.3
	Total		230[9]

Table 3: Consistency of Kazakhstan's NTMs with the Most Favoured Nation treatment, as of December 2017

Application	*Import-related measures (number and percentage shares)*	*Legislative basis*	*Comments*
All countries on equal basis	155 (79.08%)	–	–
All third countries	4 (2.04%)	Order No. 498 of December 6, 2016.[8]	Order No. 498 establishes one measure (non-automatic licensing) that is related to the country's collective global quota and, as such, cannot be considered as discriminatory
		Decree No. 356 of June 20, 2016[10]	Decree No. 356 establishes one import-related measure pertaining to testing requirement while Order No.401 establishes two import-related measures pertaining to labelling requirements. The measures are applied to imports of precious
		Order No. 401of April 28, 2016[11]	

[9] Shares do not always add up to 100 due to rounding.

[8] Order of the Minister of national economy of the Republic of Kazakhstan of December 6, 2016 No. 498 "On establishment of tariff-rate quotas for duty free imports of cane raw sugar to the territory of the Republic of Kazakhstan for 2017"

[10] Decree of the Government of the Republic of Kazakhstan No. 356 of June 20, 2016 "On establishment of the rules for imports to the territory of Republic of Kazakhstan from countries except Eurasian Economic Union members and exports from the territory of Republic of Kazakhstan to these countries of precious stones, jewellery and other products, imports to the territory of Republic of Kazakhstan and exports from the territory of Republic of Kazakhstan of unprocessed natural diamonds taking into account the Kimberley process certification scheme and about losing force of certain Decisions of the Government of Republic of Kazakhstan"

[11] Order of the Minister of investment and development of the Republic of Kazakhstan of April 28, 2016 No. 401 "On establishment of the rules for conducting expertise of precious stones, jewellery and other products from precious stones and precious metals".

Application	*Import-related measures (number and percentage shares)*	*Legislative basis*	*Comments*
			stones (except rough diamonds), jewellery and other (alike) products. The three measures , which find root in the Board of the Eurasian Economic Commission Decision of April 21, 2015 No. 30 "On Non-tariff regulating measures", establish compliance with the Kimberley certification scheme and are , as such, not in contradiction with the MFN treatment principle. The scheme requires exports from member countries to be accompanied by the Kimberley process certificate.[12] Countries that are not signatories to this scheme are excluded from participating in trade in rough diamonds. The national law and the Eurasian Economic Union harmonized legislation do not specify the list of countries subject to these measures, since the number of Kimberly scheme member countries is constantly changing.[13]
Certain third countries	32 (16.33%)	Different national orders adopted in accordance to Section XI, article 56, point 4 of the EAEU Treaty	Temporary prohibition measures, applied to certain countries that are affected by disease outbreaks for SPS reasons. Twenty one measures were applied over the period of 2011 – 2014; another eight measures were applied over the period 2015 – 2016; and, only three measures were applied in 2017. These measures were imposed for SPS purposes and do not contradict with the MFN treatment principle.
Russian Federation	2 (1.02%)	Order No. 27 of January 22, 2016 [14]	The legislation establishes two measures: import notification; and import-monitoring and -surveillance requirements and other automatic licensing measures that are applied on military equipment and technologies. Order No. 27 was adopted pursuant to an Agreement between the Republic of Kazakhstan and Russian

[12] For an account of the Kimberley process certification scheme, see for example, South African Diamond and Precious Metals Regulator. Kimberley process certification scheme 2017, available at: http://www.sadpmr.co.za/upload/KPCS_Core_Document.pdf; and, European Union External Action Service. Kimberley Process. What the international community is doing to tackle conflict diamonds, available at: http://eeas.europa.eu/archives/docs/blood_diamonds/docs/kp_presentation_en.pdf

[13] The list of Kimberley process participants and observers in 2017 is available at: https://www.kimberleyprocess.com/en/kp-participants-and-observers

[14] Order of the Minister of defense of the Republic of Kazakhstan of No. 27 of January 22, 2016 "On establishment of the rules on forming the list of goods and list for monitoring of imports (exports) of military equipment and technologies between the Republic of Kazakhstan and Russian Federation"

Application	*Import-related measures (number and percentage shares)*	*Legislative basis*	*Comments*
			Federation on military and technical cooperation (2015). As such, these measures cannot be considered as discriminatory.
Certain third countries	3 (1.53%)	Environmental Code of Kazakhstan	The legislation establishes three measures (labelling requirements, marking requirements, requirement to have consumption records), which are applied to imports of ozone-depleting substance from countries that are signatories to Montreal Protocol. Imports from countries that are not signatories to the Montreal Protocol are prohibited in Kazakhstan (this prohibition is established under Decision of the Board of Eurasian Economic Commission No. 30 of April 21, 2015 "On non-tariff regulating measures")
Total	196 (100%)		